



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
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February 15, 2022

Honorable Laura Kelly
State Capitol – 2nd Floor
300 SW 10th Avenue
Topeka, Kansas 66612

BY HAND DELIVERY

Dear Governor Kelly:

As you know, the federal government is attempting to force many healthcare workers in Kansas to obtain vaccination against COVID-19 as a condition of continued employment. The principal instrument to accomplish this objective is the Interim Final Rule - Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination (“healthcare mandate”). Because of the devastating effect on segments of Kansas healthcare, I have brought a legal challenge against the healthcare mandate. Unfortunately, on January 13, the U.S. Supreme Court declined to issue preliminary relief enjoining enforcement while our lawsuit proceeds. Thus, although I remain optimistic about the prospects for eventual relief, enforcement of the healthcare mandate currently may proceed, causing irreparable damage in our state.

Because of the healthcare mandate, many Kansas healthcare facilities, including long-term care facilities, are in a position of requiring their employees to become vaccinated against COVID-19 as a condition of continued employment. Some employees will refuse, resulting in fewer healthcare professionals available to serve Kansans in need of care. In my view, it is shameful that some of the healthcare heroes of the past two years, who have given dedicated service throughout the pandemic, now face losing their jobs because of their individual medical decisions. I note that you stated healthcare facilities under direction of the executive branch of state government must comply with the healthcare mandate, subject to the religious and medical exemptions enacted in state law in November.

While problematic everywhere, this “jab-or-job” choice for healthcare workers is particularly devastating in small facilities in our rural communities. Already substantially understaffed before the pandemic began, and having lost more vital workers to fatigue because of their dedicated service through the pandemic, many rural facilities face the very real risk of no longer being able to operate or otherwise having to reduce services if even a small number of employees quit or are terminated rather than receive the shot. This outcome, of course, is devastating not only to the workers, and not only to the facilities, but to all rural Kansans who rely on those workers and facilities for access to care in our rural communities.

In the course of our ongoing litigation challenging the healthcare mandate, it has come to my attention that some governors have requested that the Centers for Medicare and Medicaid Services (CMS) grant a waiver from the healthcare mandate for healthcare facilities in rural communities. A copy of such a request made by Governor Jim Justice of West Virginia and Governor Glenn Youngkin of Virginia is enclosed.

I respectfully request you immediately seek such a waiver for Kansas as well. I recommend seeking a full waiver from the federal healthcare mandate for rural facilities. At a bare minimum, however, CMS should expressly recognize and fully accommodate the medical and religious exemptions available under Kansas law as a result of legislation enacted when the Kansas Legislature called itself into special session last fall. An express requirement by CMS to recognize our state-law protections would relieve any concern that CMS might challenge the state law's validity or somehow penalize healthcare facilities that comply with the requirements of state law. Time is of the essence to protect our healthcare heroes and to ensure continuity of lifesaving care services in rural Kansas communities. CMS currently is requiring 100 percent compliance by April 18, and for a two-shot regimen the first is currently due and the second by March 15.

Thank you for your timely consideration of this request. My office stands ready to assist in this matter if needed.

Sincerely,



Derek Schmidt
Kansas Attorney General

Enclosure

Cc: President Ty Masterson
Speaker Ron Ryckman Jr.
Minority Leader Dinah Sykes
Minority Leader Tom Sawyer



January 31, 2022

Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
200 Independence Ave SW
Washington, DC 20001

Dear Administrator Brooks-LaSure,

We write today to respectfully request a limited waiver from the Centers for Medicare and Medicaid Services' (CMS) interim rule on COVID-19 health care staff vaccinations. Our objections to the rule itself have been well noted, but we recognize the legal process has left this interim rule in place. However, rural and state health care facilities in our states are facing an urgent staffing crisis that we believe necessitates relief from the rule.

As you undoubtedly know, our healthcare facilities are strained. After two years of the pandemic and the temporary surge in cases related to the omicron variant, some are even at a breaking point. Unfortunately the CMS interim rule compounds this problem, potentially forcing thousands of healthcare professionals to be fired for failing to comply with the rule's requirement to be vaccinated.

Hospital systems in our states, and many of our state-run facilities, are operating under crisis standards of care. In some cases, staff who are confirmed positive for COVID-19 are being asked to return to work inside of the quarantine period. In Virginia, there is a temporary state of emergency to allow healthcare providers more flexibility in responding to staffing needs, but the top concern we continue to hear from leaders of our healthcare systems is the pending vaccination requirement and the impact it will have on staffing.

Fortunately, we do see each of our states have turned the corner on the omicron wave. However, we are concerned about the long-term impact on quality of care if thousands of healthcare professionals are no longer allowed to work because of the vaccine requirement. The impact in Southwest Virginia and throughout West Virginia will be particularly acute. In these rural areas, access to lifesaving care could be threatened and we may displace a generation of healthcare professionals in a region already battling health disparities.

Respectfully, we request CMS provide a limited waiver to the interim rule for rural and state run facilities that are in a state of crisis. This relief could take multiple forms, including broader conscience exemptions, flexibility on enforcement, or simply a six month delay of the rule. Our health teams are on standby to define the terms of this waiver to protect our most vulnerable healthcare systems and facilities from a staffing breakdown. Please give this request due consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Glenn Youngkin'.

Governor Glenn Youngkin
Commonwealth of Virginia

A handwritten signature in blue ink, appearing to read 'Jim Justice'.

Governor Jim Justice
State of West Virginia